

JUL 24 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAJEESH KUMAR,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-72326

Agency No. A095-398-223

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 14, 2009^{**}

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Sajeesh Kumar, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen based on ineffective assistance of counsel. We have jurisdiction pursuant to 8 U.S.C.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1252. We review the denial of a motion to reopen for abuse of discretion, *see Reyes v. Ashcroft*, 358 F.3d 592, 595 (9th Cir. 2004), and we deny the petition for review.

The BIA did not abuse its discretion in denying Kumar’s motion to reopen as untimely, *see* 8 C.F.R. § 1003.2(c)(2), and Kumar failed to establish grounds for equitable tolling, *see Socop-Gonzalez v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2001) (en banc) (equitable tolling available where “despite all due diligence, [the party invoking equitable tolling] is unable to obtain vital information bearing on the existence of the claim.”) (internal citations and quotation marks omitted).

The record does not support Kumar’s claim that the BIA failed to consider his equitable tolling contention.

We grant Kumar’s motion to substitute counsel.

PETITION FOR REVIEW DENIED.